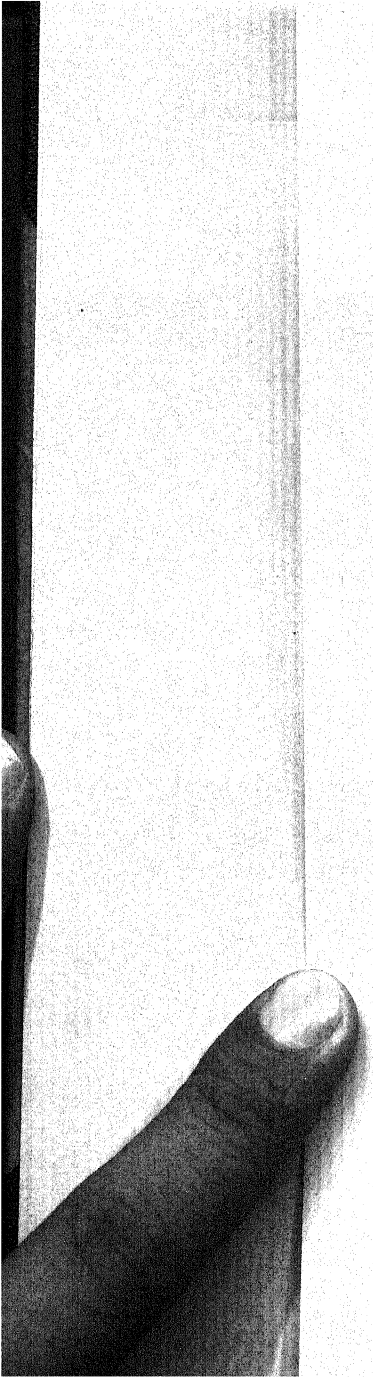
PUBLIC INQUIRIES AS AN INSTRUMENT OF GOVERNMENT

Lecture
delivered on January 18, 1960

by
PROF. W. A. ROBSON
Professor of Public Administration
London School of Economics and Political Science

INDIAN INSTITUTE OF PUBLIC ADMINISTRATION
Indraprastha Estate, Ring Road
NEW DELHI-1



PUBLIC INQUIRIES AS AN INSTRUMENT OF GOVERNMENT

(Text of a lecture delivered by Prof. W. A. Robson, Professor of Public Administration, London School of Economics and Political Science, on January 18, 1960, under the auspices of the Indian Institute of Public Administration.)

Mr. Chairman, Prof. Menon, Ladies & Gentlemen :

May I begin by expressing my warm thanks to Professor Menon for having invited me here as visiting professor and to say what a great pleasure it is to me to spend these months in New Delhi, and in particular at the School of Public Administration.

Now, to turn to the theme of my talk tonight, I would say that the point of departure is that the three classic functions of government—the legislative, the executive and the judicial—have always seemed to be insufficient to cover the very varied powers and duties of modern government. And, in particular, they leave out of account what I will call the inquisitorial functions—the functions of inquiry—which is today of great and increasing importance in all modern systems of government and which, I think, is distinct from the legislative, the executive and the administrative branch although often related to them as part of a single process. It is, of course, true that all governments have had from time to time to inquire into the state of affairs in their respective countries or into particular matters which they thought might or would cause trouble. One of the earliest examples in England is the Doomsday Book, which is the result of a very extensive inquiry. But it is only in

comparatively modern times that systematic and regular use has come to be made of public inquiries.

The Royal Commission has a long history in Britain and since the early nineteenth century it was widely used for inquiring into matters of general importance on which the Government of the day desired to appraise themselves or which they thought needed investigation. The Royal Commission is today in constant use in England as a method of giving advice to the Government after investigations of an extensive kind into particular subjects. For example, at the present time the Betting and Gambling Bill which is now before the British Parliament is a result of a Royal Commission on that subject. The Mental Health Act which was passed last year by the British Parliament was the direct result of a Royal Commission which made an extensive inquiry into mental health. There is at present a very extensive inquiry being carried out by a Royal Commission on the reorganisation of local government in London. And, just before I left England, the Home Secretary announced that Royal Commission would be appointed to inquire into many important and difficult aspects of the police forces. I could give many other examples.

The Royal Commission as a method of carrying out public inquiries has great prestige. The members of it are unpaid and are required to perform what is often a very exacting form of public service. The personnel of Royal Commissions often include Members of Parliament, former Ministers, top civil servants, and outside persons who are generally known for their public service or for their special knowledge. Generally speaking, the Royal Commission is independent of the Government of the day and a majority of its members—sometimes all of its members—are taken from outside the immediate sphere of politics or government. The Government, the Cabinet, on the other hand is equally independent of a Royal Commission, and there is no guarantee that the latter's recommendations will be accepted by the Government and acted upon.

Another type of public inquiry consists of departmental committees which we know have been recently more popular

perhaps than the Royal Commission. Some of them take the form of interdepartmental committees where the subject is one of interest to several departments. There is no necessary difference in the personnel of these bodies. The departmental committees have rather less prestige. The evidence which they take is usually not published. But there is no essential difference.

Bodies of this kind are essentially aids to policy formation by the Government. Their reports have an impact on public opinion, the extent of that impact depending on the excellence or the wisdom of the report. They influence the Press; they influence Parliament; they influence the Government; they influence the public generally. Their reports are usually discussed at some length in Parliament and the Government will normally explain to what extent they accept the findings of the committee or commission.

There are, however, certain weaknesses in bodies of this sort, at any rate as they exist in England. They seldom have an adequate staff for investigating purposes which can carry out independent inquiries on behalf of the commission or committee. And, therefore, they are dependent for their evidence on what is submitted to them by outside bodies, by Government departments, by local authorities, by independent witnesses, by groups of University teachers, and so forth. A great deal of this so-called evidence often consists of statements of what the interested persons or parties want or think desirable rather than of an objective statement of facts. There are exceptions to this lack of research staff. The Royal Commission on Population, for example, carried out some extremely extensive and very costly investigations with its own highly qualified staff of professional men, spending a very large amount of money in the process. But, we do not normally have anything comparable to what you find in some of the United States Investigating Committees where they have Task Forces which consist sometimes of outside bodies, such as the Brookings Institution in Washington or Special Staff of experts appointed for the purpose to carry out what are often extensive investigations in the field. The First

Hoover Commission and the Second Hoover Commission on the Organisation of the Executive Branch of the United States Government had very large Task Forces of that kind and spent a great deal of money on them. Some of the results were of a very small value but others were quite excellent in quality.

In Britain, the inquisitorial functions of Parliament are strictly limited. We have, of course, a few very important committees, such as the Public Accounts Committee or the Estimates Committee of the House of Commons, which are very very effective instruments for scrutinising the expenditure or the proposed expenditure of the Government and have formed an essential part of parliamentary control over finance. And here are two or three other Standing Committees of Parliament for enabling the legislature to criticise and control the executive. There is the Select Committee on Statutory Instruments, as we call our regulations. There is the Select Committee on Nationalised Industries. But, we have never developed a system of Parliamentary Committees of investigation resembling that, for example, which existed in France under the Third or the Fourth Republic or which exists today in the United States Congress. The American Congress is really little more than a collection of specialised committees and it is in these committees that real power is exercised in respect of Bills, appropriations and congressional policy in general. And neither the House of Representatives nor the Senate exercises much of its powers on the floor of the House. The enormous powers of the Congressional Investigating Committees were demonstrated in a somewhat sinister manner by the late Senator MacArthy at their worst and most dangerous, and no one, I think, in my own country wishes to follow in that particular direction. But, certainly the investigations of the American Congress are exceptionally far-reaching.

In France also, as I have already said, Parliamentary Commissions were of very great importance, certainly during the Third and the Fourth Republics, as methods to secure control by the legislature over the executive. They

not only exercised great influence over Bills and over the Budget but could also enquire into and criticise and influence the executive policy of Ministers.

I do not think it is an accident that in the French system of Government—at any rate during the Third and Fourth Republics—and in the American system that you find certain much more extensive investigating powers existing in the legislature than we have in the British Parliamentary system, because in France there was a traditional fear of a strong government—the fear of the man on a horse—which continued right up until President De Gaulle came to power. And in the United States you have a Congressional jealousy of the presidential power which is a perpetual underlying current of American politics and government. In Britain, all Governments, whatever their political complexion may be, are unanimous in refusing to permit any large number of functional committees being set up in Parliament to enquire into executive policy and administration. And the reason for that is, I think, that the Government of the day does not want to have, or rather it does not wish to run the risk of having, its power divided into fragments in a series of small committees where the Government could quite easily be defeated by a small minority of members on some minor issue. It wants to keep its power intact, to meet the Opposition on the floor of the House, and to face criticism there and there alone. In short, this is a protective attitude intended to maintain and defend the great strength of the executive in the British Parliamentary system.

II

On the other hand, we have evolved a very elaborate system of non-parliamentary public inquiries for carrying out investigations over a very wide field of a diverse character. The first type of investigation about which I would like to say something is that which can be set up under the Act known as the Tribunal of Inquiries Act, 1921. Under this Act, a resolution is required of both Houses of Parliament and the matter to be enquired into must be one of

specific and urgent public importance, it must be a definite matter described in the resolution as of urgent public importance, and it is then put before the Government of the day to appoint a tribunal of inquiry. Such a tribunal has very extensive powers under the Act. It can subpoena witnesses and call for the production of documents, it can take the evidence of witnesses on oath, it can certify persons for contempt to the High Court and do many other things of that kind, although, in practice, this is seldom necessary.

This Act came into existence shortly after the First World War when certain insinuations and allegations were made about some officials in the Ministry of Munitions having acted in a corrupt manner, and the Act was passed in order to give special powers to an investigating tribunal set up under it. In the nearly forty years which have passed since the Act was passed, there have not been a very great number of cases which tribunals appointed under the Statute have enquired into, but many of those which have been set up have been of very great political importance, including several involving the conduct and the integrity of the Police Force. For example, there was one enquiry known as the Savidge case, which I attended myself. It arose when a public man, a well-known economist, Sir Leo (George) Chiozza Money, was arrested with one Miss Savidge for an act of indecency in a public park in London. They were charged before the Police Court by two police officers and the magistrate acquitted them. Following that, the Home Secretary asked an Inspector at Scotland Yard—the headquarters of the Police—to carry out an inquiry as to whether the police constables involved had committed perjury and should be prosecuted for that crime. The Inspector in charge of the inquiry summoned Miss Savidge to Scotland Yard and it was alleged on her behalf that she had been kept there for a great many hours under conditions amounting almost to duress, and that she had been subjected to something almost equivalent to third degree methods. Questions were asked in the House of Commons. There was a storm of indignation which spread to both sides of the House, and the Government of the day agreed to one of

these tribunals of inquiry being set up. The tribunal consisted of a Lord Justice of Appeal together with a Member of Parliament from the Conservative Party and a Member of Parliament from the Labour Party. (I will come back to that in a moment, because there are certain conclusions which can be drawn from that particular experience.) The inquiry aroused an enormous amount of public interest both inside and outside Parliament. There was a majority report which more or less exculpated the Police; there was a minority report by the Labour M.P. which condemned them, and that particular inquiry was widely criticised because it was said that the Members of Parliament on the tribunal had more or less taken their respective party lines, that they had consulted or conferred with their political parties before recording their conclusions in the case. And that is the last occasion on which politicians have been included on a Tribunal of Inquiry under the Act of 1921.

There have been subsequently a number of extremely important cases which aroused even greater interest involving the conduct of ministers. There was, what is known as the case of the Budget Leakage, when J.H. Thomas who was at the time Secretary of State for the Colonies, and various Members of Parliament were alleged to have disclosed in an unauthorised manner to friends and backbenchers in Parliament what were to be the taxes in the forthcoming Budget, and in consequence they were able to conduct some extremely profitable operations on the stock exchange and elsewhere. This came to be subject of an enquiry which reflected very adversely on Mr. Thomas and which led to his hasty resignation just before the report was published. There was more recently what is known as the Lynskey Tribunal—named after Mr. Justice Lynskey who was the Chairman—which enquired into curruption alleged to have taken place during the Labour Government on the part of certain Ministers in connection with a Mr. Stanley, who was regarded as a contact man, able to pull wires to benefit his respective clients in the various government departments and ministries and who was said to confer material benefits and favours on Ministers in order

to be able to manipulate their influences. That led to one or two junior Ministers being forced to resign. A more recent case took place last year—the Parker Tribunal, so called because it was presided over by Lord Justice Parker, the present Chief Justice, which investigated the alleged leakage of information concerning a decision by the Bank of England to change the bank rate. It was alleged that this decision was divulged by the Chancellor of the Exchequer to one very high official in the Conservative Party and that various part-time members of the court of the Bank of England (*i.e.*, the Directors of the Bank of England who are also occupying financial positions in large banking houses in the city of London) had used their knowledge of this impending change in the bank rate (which had of course very large repercussions on share prices) to the advantage of the companies and banking firms with which they were connected. Very large sums of money had been made through the sale and purchase of stocks and shares which was said to be inspired by this unauthorised leakage. The Chancellor of the Exchequer was himself implicated in the allegations. Actually, everyone was cleared in that very thorough inquiry, but some people have drawn certain inferences about the undesirability of having these part-time directors of the Bank of England who also have extensive financial concerns of their own which can sometimes create a conflict of interest between State interests and their private interests.

There have also been cases involving allegations of corruption by large public authorities. For example, the Glasgow Municipal Corporation. And, there have been several other cases of maladministration or corruption which have been investigated by tribunals set up under this Act. But there have not been more than fifteen or twenty cases which have been carried out under this particular Act during the past nearly forty years.

The defect which was regarded as having destroyed the objectivity of the Savidge Inquiry had previously also undermined public confidence in Parliamentary inquiries into political scandals or allegations of political misconduct,

as in the case of the great Marconi affair which occurred just before World War I. This involved some of the most eminent political figures of the day, including Mr. Lloyd George, who were alleged to have taken advantage for their personal benefit of knowledge about large Government contracts which were being given to Marconi for wireless equipment. A Select Committee of Parliament was appointed to investigate this matter, but the political repercussions were so great, the consequences which would have occurred if these allegations had turned out to be well-founded would have been so far-reaching, particularly for the Liberal Party which was then in power, that it was generally believed that the Select Committee of the House of Commons was far too prejudiced an instrument to carry out an objective or impartial inquiry. Similar criticism had been made in the case of an earlier inquiry into the notorious Jameson Raid in South Africa. And so, we have consistently attempted, in the last twenty or thirty years, to ensure that all tribunals of inquiry investigating matters involving personal misconduct shall have a High Court Judge or Lord Justice of Appeal as chairman. Usually two eminent practising lawyers taken from the senior branch of barristers whom we call Queen's Counsel are chosen as the other members, all of them non-political, to the extent that their political views are not known and it is hoped and expected they will not colour their judgment.

III

There is also, in addition to this problem of personnel, a problem of procedure. In these inquiries no particular persons are named in the terms of reference. The Committee is asked to look into some specified matter. For example, the tribunal is asked to look into the question of whether there was an unauthorised disclosure of information or whatever it may have been. In the course of proceedings the names of many persons may be mentioned. Often without notice being given to them allegations may be made by witnesses sometimes unsupported by evidence, and perhaps without either the persons named or their

representatives being there to cross-examine or to try to counteract the statements which have been made. There is no prosecuting element in such a tribunal. The tribunal is there simply to investigate. And yet, as everyone knows, it is really there to sift the allegations which have been made usually in Parliament against particular persons or against particular departments, and because of this feature, in the early cases the tribunal itself was driven to examine and cross-examine the witnesses who came before it. This sometimes gave a very unfortunate impression both to the public and to some of the witnesses that the tribunal was hostile to them. To avoid that disadvantage the usual practice now is for the Attorney-General to appear as an independent officer to try to help the tribunal to obtain all the necessary evidence from the witnesses, without the tribunal having to examine or cross-examine through its own members. The Attorney-General said in the Lynskey case, that although his own political colleagues were concerned he appeared in an entirely non-political capacity, that he was there to do his duty as an officer of the court in the interests of justice. Nobody doubts that an Attorney-General would in fact not regard himself as politically restrained simply because political colleagues might be having a pretty unpleasant time in the matter under investigation. Any witness or interested person can be represented by a counsel although, of course, it is very costly where an inquiry lasts perhaps several weeks as the Bank of England case did and the Lynskey case did.

That is the institution which exists and has developed for investigating charges in Britain against the integrity of Ministers or against persons who may obtain information from or through Ministers. You will observe that there is no standing tribunal. Before a tribunal is appointed to inquire into each particular matter a very strong *prima facie* case has to be made out for setting up a tribunal. Often very great pressure has to be exercised by the Opposition. That was certainly true in the Bank of England case. The Labour Party leaders urged again and again on the Prime Minister that an inquiry should be held before

he agreed to do so. Most people in England would agree that we now have available an objective and thoroughgoing type of inquiry. Parliament and the public have got confidence in these tribunals as a method of probing suspicions or allegations of corruption or dishonesty in political life or abuse of powers by the Police or corruption in local government. These tribunals are, however, only one type of public inquiry and I would like to tell you something about the other types which we have developed.

The Critchel Down case was a case which led to the resignation of the Conservative Minister of Agriculture. This was a case in which the Minister thought that there might have been some corruption on the part of civil servants in his Department. The case concerned some land which had been requisitioned for military purposes and had not been returned to its owner when it was no longer required for these purposes, though he was very desirous that this should be done. The Minister, thinking that corruption was involved, invited an outside Barrister of high status to conduct an inquiry and his report showed that there was no corruption at all but that there was some very serious maladministration and eventually this led to a reorganisation of the Ministry of Agriculture and considerable transfers of personnel within the Ministry and, as I have said, the resignation of the Minister. The Home Secretary and other Ministers have from time to time appointed lawyers to hold public inquiries into specific cases of maladministration particularly by the Police or by local authorities in regard to the treatment of deprived children entrusted to their care, and similar matters.

IV

Where allegations against the integrity of civil servants have been made we have usually had a somewhat different procedure. There was, for example, what is known as the Francs case in 1928—this was a case which came to the public notice as a result of a High Court action where it was revealed that certain officials in the Foreign Office

had been speculating on a very large scale in foreign exchange and it was suggested that they were using official knowledge in order to benefit their own pockets in that way. The Prime Minister appointed a Committee of three eminent civil servants to enquire into these allegations and their report has become quite a classic statement of what is the proper conduct of civil servants where their private interests may appear to be in conflict with their public duties. And again more recently, when the Government decided to scrutinise carefully the cases of civil servants in confidential positions if there was a *prima facie* case that they had communist or fascist associations, a Committee was set up consisting of three very senior Secretaries to Government to carry out these investigations. Unlike the other inquiries which I have been talking about, these are normally not held in public.

These are the most important devices which we use in Britain for enquiring into corruption or improper action by Ministers, politicians, or civil servants. The results of these inquiries have led to resignations and dismissals, to revisions in the procedure of government departments and police authorities, and to many other changes. They rely on the exercise of impartial methods of investigation. They involve the use of judges and eminent practising Barristers not known or understood to be associated with political parties and to the exclusion from the tribunals of persons known to have a strong party political bias. The functions of these inquiries are confined to finding the facts, to drawing conclusions, and sometimes include making recommendations for changes in administration, but it is entirely for the government of the day to decide what action, if any, should be taken.

V

I want to pass from that type of public inquiry to the much more numerous types of inquiry which are continually taking place in connection with the actual administrative work of government. For example, there is an elaborate machinery for public inquiries into accidents on Railways,

accidents to ships, accidents to aircrafts, accidents caused by explosions and other types of accidents. They must be investigated by public inquiries, and the purpose of this is, of course, in order to be able to diagnose the cause and to prevent recurrence of the accidents. Here the essential need is to have the public inquiry conducted by persons possessing technical knowledge and special experience in the subject matter, and so you find expert permanent staff consisting of highly qualified technicians of one sort or another appointed in the appropriate Department, such as Ministry of Transport, Ministry of Aviation, and so forth.

One feature which is worthy of notice in connection with this type of public inquiry is the need to safeguard the independence of the Inspector or official who carries out the inquiry because an accident may sometimes be caused by the negligence or error of the Department in which he, the official or Inspector, is actually employed. That can very easily happen in the field of Civil Aviation where the airfields or traffic control or telecommunication system is operated by the Government Department which employ the accident investigating staff. It is extremely important that the Chief Inspector should be able to report direct to the Minister on the one hand and to be able to publish his own report regardless of what his superiors may feel about it on the other hand.

There are other types of public inquiries used in administration in Britain and I would say shortly that we are using public inquiries extensively in connection with social services and local government, in connection with housing and slum clearance schemes, in connection with the acquisition of land by public authorities, in connection with town and country planning schemes made by local authorities and so on.

What happens is something like this. The local authority of, let us say, a city or county makes a planning scheme. It has to submit that scheme to the Minister. This is a comprehensive planning scheme. The Minister will order a public inquiry to be held and he will send out one of his professional Inspectors who is thoroughly qualified and

experienced in town planning to conduct the inquiry. At that inquiry all interested local persons—everyone who is interested in the scheme—, whether they object to it or whether they support it, whether they have a financial interest or only a civic interest, are able to put their point of view either directly or through their legal representative. The procedure is normally quite informal. The Inspector will visit the site, and observe any particular features of the plan to which his attention is drawn by the objectors or supporters, and he may spend a considerable time in getting the 'feel' of public opinion and assessing the strength and weakness of the contentions put forward by objectors or supporters.

This is one type of public inquiry and it can assume very large dimensions. For instance, when the London County Council submitted their planning scheme for the County of London there were six thousand objections; for a city of nearly 4 million people that may not seem very much but it took weeks for all these objections to be sorted out. Then again, if the Minister decides to have built a new town under the New Towns Act, he will always order a public inquiry on the site of the land which is designated for that purpose so as to hear everything which everyone wants to say in favour and against it before the final decision is made.

Another example is of the local authority which proposes to make a slum clearance scheme which will involve the acquisition and development of land, and the demolition of all slum dwellings on it in order to have improved housing. There again, there will be a local inquiry if objections are made.

There are also public inquiries held in connection with individual applications. For example, someone wants to develop a particular piece of land. Under our Planning legislation, he must apply to the local authority for permission. If the local authority refuses or attaches conditions to its approval which he does not accept he can appeal to the Minister, and the Minister will then order a public inquiry to be held in the locality. Here again, all

the objectors, the local authorities, and all supporters, and everyone who is interested in the matter will have a chance of expressing their view. A very large number, amounting to several hundred, of these public inquiries are being held all over the country every month. Usually, the Inspectors who hold the inquiries are full-time civil servants with high professional qualifications. They are not lawyers but they are well acquainted with the general requirements which the courts have laid down for the conduct of public servants exercising judicial functions, such as the rules of natural justice, so that they are able to keep clear of rebukes in the High Court. Broadly speaking, everybody thinks well of the Inspectors who hold these inquiries.

The Inspectors report to the Minister and it is he who decides. Before he decides he can consult any of his senior officials and obtain advice from anyone that he wishes to consult in his own or other Ministries. Thus, he is in no way bound to follow the recommendations of the Inspector. There has been great discussion in recent times as to whether the Inspector's Report should be published. The parties, who appear before the Inspector, urge that this is a judicial or semi-judicial proceeding and therefore that they are entitled to see the Inspector's Report and to see what his recommendations are. The civil servants who appeared on these questions before the Franks Committee on Administrative Tribunals and Inquiries urged that it would be terribly unconstitutional to reveal the advice which a Minister receives from his Inspectors or other civil servants. This, they suggested, would mean digging the grave of the whole constitutional principle of ministerial responsibility in Britain and would be quite disastrous. The Franks Committee recommended that the Inspector's Report would be made available to the parties. The Government have accepted that recommendation. Under the new procedure, if the Minister does not agree with the recommendations of the Inspector he is perfectly free to make a decision of a different kind but he must state his reasons for disagreeing with the Inspector's Report and that goes to the parties and becomes public knowledge.

There was a lot of argument before the Franks Committee as to whether these public inquiries are judicial or whether they are part of an administrative process which begins in a locality and ends with the Minister's decision. The Franks Committee said that that was too difficult a question to decide. They did not think it was necessary to accept either contention and they took a very pragmatic view. In this context the public inquiry is used as a method of enabling the Minister to become better informed on questions of public importance on which administrative decisions are required, and about the relevant facts and circumstances. In respect of a particular matter on which he has to give his decision the public inquiry will help to make him better informed about the state of local feelings, about possible alternatives. It is an immense advantage to have face-to-face dealings between the representatives of a Ministry or Department and the people who are going to be affected by the Minister's decision, as compared with mere paper communications, however detailed.

VI

There are other types of public inquiry which I have no time to discuss, such as those which are held on draft regulations under the Factories Act. Here the purpose is to find out whether there are serious objections, or if better alternatives are available, before the Minister makes draft regulations relating to some dangerous trade or industry under the Factories Act.

You can see that the public inquiry serves a valuable purpose in assisting in the discovery of corruption or the revealing of particular acts of maladministration on the part of Ministers or civil servants. But it also promotes other purposes of equal value. It is really a method by which the executive government is able to become better informed on questions of public importance on which administrative decisions are required. It is an essential step in the process of making decisions. It is a way of avoiding bureaucratic remoteness from the facts and feelings

of everyday life. It is a way of helping to ensure that power will be based on knowledge and that officials, Ministers, and those in high places at the centre will know how ordinary citizens whose interests or lives are affected by government action feel about these matters relating to social services which are under consideration.

* * *

In this brief and inadequate survey I have tried to show how extensive is the use of public inquiries, and how diverse is their character and the purposes which they are intended to serve. There are some which serve as aids to the formation of government policy in the framing of legislation. There are some which investigate charges of corruption or improper conduct on the part of politicians, civil servants or other persons in relation to government. There are some which inquire into cases of maladministration or of some failure in government resulting perhaps in an accident or outbreak of disease. There are some which inquire into the facts and feelings of a local community concerning a particular planning scheme. There are some which are designed to throw light on matters on which executive decisions have to be taken by Ministers. I would say that in all these different roles (and there may be others which I have had no time to mention) the public inquiry is contributing in no small way to the democratisation of government.